IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 124 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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DINESH @ BABLU LALJI MISHRA R/O UDHANA DIDOLI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
Mr. N.D. Gohil, AGP, for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 29/06/2006

ORAL JUDGMENT

By way of filing this petition, the petitioner has challenged his detention order dated

14.12.2005 by which he is detained as dangerous person under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (“PASA” for short). Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the petitioner. The said cases are registered under the provisions of Sections 393, 394, 397 398 as well as under the Arms Act respectively. The detaining authority after considering those pending cases as well as after considering the statements of the witnesses recorded under Section 9(2) of the Act has detained the petitioner by way of preventive detention under PASA as dangerous person.

The learned advocate for the petitioner has submitted that so far as pending two cases are concerned, they are under the provisions of the Indian Penal Code and they are individual in nature and by committing the said offence it cannot be said that the petitioner has violated public order and at the most it can be said that he has violated law and order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to the public order. In this connection, the learned advocate for the petitioner has relied on the decision of the Division Bench of this Court in in **A.J.Solanki V. Police Commissioner, Surat reported in 2000 (1) GLH 393.** In paragraph 22 of the said

judgment, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs.”

The learned advocate for the petitioner further submitted that at the time of passing the detention order the petitioner was already in judicial custody in connection with the aforesaid criminal cases and the authority without any basis or material has come to the conclusion that on presenting application the petitioner is likely to be released on bail. He submitted that considering the nature of serious offence in which the petitioner is alleged to have been involved, the detaining authority has committed a mistake in coming to the conclusion that the petitioner will be released on bail as if the bail orders are passed by the Magistrate in routine

manner. He submitted that even today the petitioner is in judicial custody and he has not even applied for bail. In this connection, the learned advocate for the petitioner has relied upon a recent decision of the Hon'ble Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> "13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).
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> > ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there

was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).””

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the

absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

The second argument of Mr. Prajapati, learned advocate for the petitioner is concerned, it is true that the detaining authority has not given any reasons as to on what basis and material it has formed the opinion that the petitioner on presenting bail application will be released on bail. The detaining authority without any basis or foundation or material on record has come to the conclusion that the petitioner will be released on bail even the bail application is not pressed into service.

Considering the judgment of the Hon'ble Supreme Court in the case of T.V. Sravanan Vs. State (supra), the detaining authority has formed the opinion about bail being granted to the petitioner without any basis. The order of detention is only required to be rejected on the aforesaid ground.

The petition is allowed. The order of detention dated 14.12.2005 is quashed and set aside. The petitioner Dinesh @ Bablu Lalji Mishra is ordered to be released forthwith unless his presence is

required in connection with any other case. At this stage, Mr. Prajapati, learned advocate for the petitioner, has made a voluntary statement that even if the petitioner is released on bail then also the petitioner will not enter the limit of Surat City Police Commissionerate area till 31.12.2006 except for attending the pending criminal cases. This voluntary statement is recorded, it is for the authority to monitor the same. Rule is made absolute with no order as to costs.

(P.B. MAJMUDAR, J)

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